IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVN.APPLICATION NO.166 OF 2006

Shri Rahul Ashok Kharat ... Applicant.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. Anil N. Bugde, for the Applicant.
Mr. Rajesh More, A.P.P. for the State.
Mr. A.S. Dubey for the Respondent No.2.

CORAM : A.S. OKA, J.
DATE : 01ST SEPTEMBER, 2006.

P.C. :

1. Rule. Advocate appearing for the Respondents waives service. Taken up for hearing forthwith.

2. This Criminal Revision Application is filed by the Applicant who is an accused in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to of the said Act). The second Respondent is the complainant. The Applicant was convicted by the learned Metropolitan Magistrate by order dated 8th July 2005. The Applicant was directed to undergo simple imprisonment for one year and to pay fine of Rs.5,000/- and in default to suffer simple imprisonment of 6 months. The Applicant was directed to pay compensation to the second Respondent in the sum of Rs.2,25,000/- and in default to suffer simple imprisonment for 9 months. The Applicant preferred an Appeal before the Sessions Court which has been dismissed by order dated 6th December 2005.

3. The learned Advocate for the Applicant submitted that the Appeal has been disposed of without considering the submissions made before the learned Additional Sessions Judge and without recording any proper findings. He also invited my attention to the operative part of the order passed by the learned Additional Sessions Judge and submitted that the impugned Judgment and Order shows non application of mind. The learned Advocate for the second Respondent supported the impugned Judgment and Order. He submitted that while confirming the order of conviction, the learned Additional Sessions Judge has considered the merit of the case and no inteference was called for.

4. I have considered the submissions. The Appeal preferred by the Applicant before the learned Additional Sessions Judge was an appeal against order of sentence and conviction. While dealing with the said Appeal, the Appellate Court was expected to consider and appreciate the oral and documentary evidence on record. The Appellate Court was also expected to deal with submissions made on behalf of the Appellant and to record findings thereon. However, I find that the substantive appeal against order of conviction has been decided by the learned Additional Sessions Judge in a very cryptic manner. In the cryptic order which is passed by the learned Additional Sessions Judge, there is no reference to oral evidence on record. The operative part of the order reads thus :-

> "Appeal is without merits. However, considering the nature of the circumstances I permit the appellant to pay the compensation amount of Rs.2.25 lacs on or before 31.3.2006. In defult the order of the Ld.M.M. shall stand received relating to compensation and sentence. In default the appellant shall surrender before the Ld.M.M. on or before 15.4.2006 to undergo his sentence. The order of the Ld.M.M. is stayed till 1.4.2006. Appeal stands disposed off."

5. If the operative part of the order is read, it is not necessary to offer any further comments about the manner in which the appeal has been disposed of. First part of the operative order can be read to mean that if compensation amount is paid on or before 31st March 2006, the Applicant may not undergo any sentence. However, the order of sentence is not specifically set aside. The operative part of the order is very vague.

6. It is obvious that the Appellate Court has not done its duty of deciding the Appeal in accordence with law. The only course which is left open for me is to set aside the order and to remand the appeal to the Sessions Court for fresh decision.

7. Hence, I pass the following order :-

(a) The impugned Judgment and Order dated 6th December 2005 is quashed and set aside.

(b) Criminal Appeal No.395 of 2005 is restored to the file of the Sessions Court at Mumbai.

(c) The parties are directed to appear before the learned Sessions Judge, Mumbai on 3rd October 2006 at 11.00 a.m. The learned Sessions Judge, Mumbai may hear the Appeal himself or may assign it to any other Court as per administrative convenience.

(d) The Appeal shall be decided afresh on merits in accordence with law.

(e) Appeal shall be decided as expeditiously as possible and preferrably on or before the end of April 2007.

(f) Interim order, if any, operative during the pendency of the said Appeal is also restored.

(g) Rule is made partly absolute in the above terms with no order as to costs.

(h) Office will send Writ of this order to the Sessions Court immediately.

JUDGE